IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 2

JAMES MARCHETTI,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF AND APPENDIX FOR PETITIONER

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Opinions Below

The opinion of the U. S. Court of Appeals for the Second Circuit is reported, *sub nomine, United States* v. *Costello, et al.*, 352 F. 2d 848 (2 Cir. 1965) (R. 16-21).[1] The opinion

[1] References are indicated as follows:

References to the numbered pages of the appendix to this brief (a).

References to the numbered pages of the Transcript of Record in *Costello* v. *United States*, No. 3, this Term (R.).

References to the numbered pages of the Government's brief in *Costello* v. *United States*, No. 3, this Term (Govt. Br.).

References to the numbered pages of the Government's brief in *Grosso* v. *United States*, No. 12, this Term (Govt. Br., Grosso v. U. S.).

of the court of appeals in a related case, referred to in the *per curiam* denial of the petition for rehearing, is reported as *United States* v. *Grassia,* 354 F. 2d 27 (2 Cir. 1965).

Jurisdiction

The judgments of the court of appeals were entered on October 29, 1965 (R. 29). A timely petition for rehearing was denied on November 26, 1965 (R. 31). The petition for a writ of certiorari was filed on December 15, 1965, and was granted on January 9, 1967. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Questions Presented

This Court limited its grant of certiorari to the following question:

(1) Do not the federal wagering tax statutes here involved violate the petitioner's privilege against self-incrimination guaranteed by the Fifth Amendment? Should not this court especially in view of its recent decision in *Albertson* v. *Subversive Activities Control Board,* 382 U. S. 70 (1965), overrule *United States* v. *Kahriger,* 345 U. S. 22 (1953), and *Lewis* v. *United States,* 348 U. S. 419 (1955)?

In addition, in its order of June 12, 1967, the Court requested the parties to discuss the following questions:

(2) What relevance, if any, has the required records doctrine, *Shapiro* v. *United States,* 335 U. S. 1 (1948), to the validity under the Fifth Amendment of the registration and special occupational tax requirements of 26 U. S. C. §§4411, 4412?

(3) Can an obligation to pay the special occupational tax required by 26 U. S. C. §4411 be satisfied without filing the registration statement provided for by 26 U. S. C. §4412?

Constitutional and Statutory Provisions Involved

Petitioner maintains that the judgments of the court below, affirming his convictions for violations of the wagering tax laws and the federal conspiracy statute, violate his rights under the Fifth Amendment of the United States Constitution. This constitutional provision, as well as the specific occupational and registration wagering tax laws involved, 26 U. S. C. §§4411, 4412, and the general wagering tax laws and internal revenue statutes relative to petitioner's claim are set forth in the appendix to this brief (1a-11a).

Statement

Petitioner faces a one-year prison sentence and a $10,000 fine for conviction in the United States District Court for the District of Connecticut on two indictments charging willful violations of the wagering tax statutes and the federal conspiracy statute (R. 1). One indictment charged a conspiracy among petitioner and co-defendants Costello and Gjanci willfully to fail to pay the special occupational tax imposed by 26 U. S. C. §4411 (R. 1). The second indictment, in two counts, charged the willful failure to pay the special occupational tax, required by 26 U. S. C. §4411, and the willful failure to register, required by 26 U. S. C. §4412.

After verdict, petitioner moved to arrest judgment, claiming, *inter alia,* that the statutes providing for the special wagering occupational tax and registration violated his Fifth Amendment privilege against self-incrimination (R. 5-9). The trial court denied the motion and imposed a one-year prison sentence and a $10,000 fine upon petitioner.

On appeal the court below affirmed, holding that the claim with respect to the self-incrimination clause was controlled by *United States* v. *Kahriger,* 345 U. S. 22 (1953), and *Lewis* v. *United States,* 348 U. S. 419 (1955). On petition for rehearing, the court of appeals denied relief, but noted, by reference to *United States* v. *Grassia,* 354 F. 2d 27, 29 (2 Cir. 1965), that while "the rationale of *Albertson* . . . may lead the Supreme Court to overrule its previous decisions in . . . *Kahriger* . . . and . . . *Lewis,* insofar as these sustained the federal wagering statutes against attack on the ground of self-incrimination, we consider that issue more appropriate for that Court's determination."

This Court originally granted certiorari to review the issue involved here in *Costello* v. *United States,* 383 U. S. 942 (1966), and upon Costello's death, the petition for a writ of certiorari in this case, which was filed December 15, 1965, was granted.

After oral argument last Term, the Court restored the case to the docket for reargument and requested the parties to discuss, in addition to the question in the original order granting certiorari, the two questions above regarding the required records doctrine and the ability of a taxpayer to pay the occupational tax without registering.

Summary of Argument

This brief deals primarily with the two questions propounded by the Court after the oral argument last Term. It supplements the brief for petitioner filed last Term and the brief filed for petitioner in *Costello* v. *United States, supra,* which the Court has held in abeyance because of the death of Costello.

The statutory framework of the wagering tax laws and the nature of gambling activities in this country are reviewed in an introduction to the argument. This review demonstrates that compliance by petitioner with the wagering tax laws here involved would compel disclosure of information which would necessarily incriminate him under unrelated criminal statutes of both state and federal govments.

In summary, petitioner contends here (1) that the required records doctrine announced in *Shapiro* v. *United States, supra,* has no relevance to the validity of the special occupational tax and registration requirements of 26 U. S. C. §§4411, 4412 in the posture of this case; (2) that the obligation to pay the special occupational tax required by 26 U. S. C. §4411 cannot be satisfied without filing the registration statement provided for by 26 U. S. C. §4412; (3) that the special occupational tax and registration violate petitioner's privilege against self-incrimination guaranteed by the Fifth Amendment, requiring the overruling of the *Kahriger* and *Lewis* cases and (4) that the use-restriction rule urged by the Government in the event the special occupational tax and registration are held to violate the Fifth Amendment privilege is not justified in this case.

Argument

Introduction

The Nature Of Gambling Activity In The United States And The Wagering Tax Laws.

In order to place petitioner's Fifth Amendment claim in perspective, it is appropriate—particularly in view of the Court's additional inquiries since the original argument—to review the legality of gambling activity in the United States against the framework of the wagering tax laws. Such a review indicates that the wagering tax laws operate upon "a highly selective group inherently suspect of criminal activities . . ." and against "an area permeated with criminal statutes . . ." *Albertson* v. *Subversive Activities Control Board, supra,* 382 U. S. at 79.

In general, with the exception of parimutuel betting at race tracks, Nevada is the only state which has legalized gambling. Moreover, whenever different forms of gambling have been licensed, usually the law has been repealed within a short period of time. Peterson, Gambling . . . Should It Be Legalized? 94-95 (1951). With the exception of Tennessee, which classifies it as a felony, gambling is a misdemeanor in all states but Nevada. Note, *The Fifth Amendment and the Federal Gambling Tax,* 5 Duke L. J. 86, 87 n. 9 (1956).

In Connecticut, where petitioner resides, gambling is proscribed by §§53-271 to 53-279, §§53-282 to 53-284, §§53-290 to 53-298 and §54-197, although bingo is authorized under certain conditions, if sponsored by a charitable or-

ganization, §7-169. (Conn. Gen. Stat., 1958 Rev., as amended).

In addition to the almost universal proscription of gambling by the states, Congress has enacted legislation to:

prohibit interstate transportation of wagering paraphernalia, 18 U. S. C. §1953;

prohibit transmission of wagering information, 18 U. S. C. §1084;

prohibit interstate and foreign travel or transportation in aid of racketeering enterprises which includes any business enterprise involving gambling, 18 U. S. C. §1952;

prohibit transportation of gambling devices, 15 U. S. C. §§1171-1172;

require registration of manufacturers and dealers of gambling devices, 15 U. S. C. §§1173-1178;

prohibit gambling on ships or airplanes owned by American citizens in areas of federal jurisdiction, 18 U. S. C. §§1081-1083;

prohibit importing, transporting or mailing lottery tickets and related matter, 18 U. S. C. §§1301-1303, 19 U. S. C. §1305;

prohibit broadcasting lottery information, 18 U. S. C. §1304; and

prohibit lottery material in packaged tobacco, cigars or cigarettes, 26 U. S. C. §5723(c).

It is against this background that the wagering tax laws operate. In 1951, in the wake of a Senate committee report stating that "organized criminal gangs operating in interstate commerce are firmly entrenched in our large cities in the operation of many different gambling enter-

prises such as bookmaking, policy, slot machines,"[2] Congress enacted the wagering tax laws here involved.

Two related taxes on wagering have been imposed. The first, not directly involved in this case, is the 10 per cent excise tax on gross wagers accepted. 26 U. S. C. §4401.[3] The 10 per cent excise tax is equal to the amount generally recognized to be the profit realized on illegal gambling in this country.[4] The second tax, the one directly involved

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[2] Third Interim Report, Special Committee to Investigate Organized Crime in Interstate Commerce, S. REP. 307, 82d Cong., 1st Sess. 1-2 (1951).

[3] Certiorari was granted to review the constitutionality of this excise tax in *Grosso* v. *United States*, 385 U. S. 810 (1966), which has been assigned for argument with the instant case.

[4] The testimony before the Senate Committee reviewing the wagering tax laws was as follows:

"Mr. Scarne. I made a survey that lasted 5 years and I interrogated 10,000 people that earn their living from gambling sources . . .

* * * * *

"Mr. Adlerman. Therefore, the percentage is not the same for all bookmakers, but on the average would you say that bookmakers make about 10 percent?

"Mr. Scarne. Ten percent on the average, right.

"Mr. Adlerman. Under the Federal Stamp tax, they have to pay 10 percent of the gross value or the handle, is that correct?

"Mr. Scarne. Correct.

"Mr. Adlerman. Can you explain to me how they can pay 10 percent of the gross handle and still make anything out of the bet?

"Mr. Scarne. They cannot do it . . .

"If you are paying 10 percent on the gross handle on winners and losers, it is absolutely impossible. They cannot pay it.

"The Chairman. Who gets cheated in the transaction?

"Mr. Scarne. The Government.

"Mr. Adlerman. In other words, if I understand you correctly, the bookmakers cannot pay the Federal tax of 10 percent and operate legitimately?

here, is a special occupational tax of $50 per year imposed by 26 U. S. C. §4411 upon persons liable for the 10 per cent excise tax and payable prior to engaging in gambling activity. 26 U. S. C. §4901.

The wagering tax laws do not reach all gambling. By special exemption wagering at a parimutuel enterprise licensed by a state is excluded. 26 U. S. C. §4402. By the definition of wagering, the taxes do not apply if the participants are present when the bets are placed, the winners are selected and the prizes distributed, or if the activity is conducted by an organization exempt from tax under 26 U. S. C. §§501, 502. 26 U. S. C. §4421. As the House Report at the time of the enactment of the laws stated:

> "Among those games which are within the scope of the exclusion would be card games such as draw poker, stud poker, and blackjack, roulette games, dice games such as craps, bingo games, and the gambling wheels frequently encountered at county fairs and charity bazaars."[5]

Because of these limitations, the wagering taxes operate primarily upon illegal wagering. All gambling activity carried on in the Nevada casinos is exempt; bingo-like games

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"Mr. Scarne. They cannot operate at all. If they paid, they could not operate.

"Mr. Adlerman. In other words, they would have to cheat themselves and work for nothing or not pay the Government 10 percent. The result is they cheat the Government." *Hearings Before the Permanent Subcommittee on Investigation of the Committee on Govt. Operations U. S. Sen.*, Part I, 87th Cong., 1st Sess. 87-88 (1961).

[5] H. R. Rep. No. 586, 82d Cong., 1st Sess. 57 (1951).

are exempt; church-operated activities are exempt; and wagering at state-licensed race tracks is exempt.[6]

Several record keeping and registration requirements are incorporated in the wagering tax laws. Everyone liable for the $50 special occupational tax is, pursuant to 26 U. S. C. §§4412, 6001, required to register and make a return with the appropriate district director of the Internal Revenue Service, giving his name and address, place of gambling activity and names of his agents or his principals, and pursuant to 26 U. S. C. §6011(a), to complete a detailed Form 11-C which is both a tax return and application for registry. Among the questions specifically asked in Form 11-C in effect when petitioner was required to register were:

> "5. Are you engaged in the business of accepting wagers on your own account?
>
> "6. Do you receive wagers for or on behalf of some other person or persons?" (11a).

In addition, each person liable for the 10 per cent excise tax is required to keep daily records showing details of his operations. 26 U. S. C. §4403. These records may be

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[6] To be sure, Nevada bookmaking and policy operations, legal under state law, are not exempt from the wagering tax laws. But the Treasury Regulations and the Nevada gaming regulations combine to ease the burden on the Nevada bookmaker and policy operator. Treasury Regulations provide that the amount of the tax can be collected from the bettor as a separate charge only if "it is established by actual records of the taxpayer that such amount of tax was collected from the bettor as a separate charge." 26 C. F. R. §44.4401-1 (iv). Nevada regulations provide, "The entire amount of federal tax shall be collected from the player and adequate records thereof maintained." Regs., Nevada Gaming Comm. & Control Board §5.020 (1966).

examined and inspected as frequently as necessary. 26 U. S. C. §4423.

Contrary to the situation prevailing with income tax returns, 26 U. S. C. §6103, and census reports, 13 U. S. C. §§8, 9, restrictions on access to the wagering tax returns are not imposed and the returns are not treated as confidential.[7] The I. R. S. district director is required by law to maintain for public inspection a listing of all who paid the special occupational tax. 26 U. S. C. §6107. Moreover, the taxpayer must post the occupational tax stamp "conspicuously" in the place of his activity or keep it on his person. 26 U. S. C. §6806(c). Even a non-willful violation of the posting provision results in a penalty. 26 U. S. C. §7273(b).

And the wagering tax law specifically provides that payment of the tax does not exempt the taxpayer from any federal or state penalty imposed on the same activity nor prohibit any state from taxing the same activity. 26 U. S. C. §4422.

It is against this framework of the federal wagering tax laws operating upon basically illegal activity that petitioner asserts his privilege against self-incrimination. To view this case, as the Government would (Govt. Br., Grosso v. U. S. 10), as presenting a federal-state conflict in which a state seeks to drain the United States treasury by affixing the criminal label to generally legal activity is to ignore the nature of the activity taxed and the operation of the wagering tax laws.

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[7] This was specifically recognized in *Irvine* v. *California*, 347 U. S. 128, 130 (1954), where the Court said:

> "This statute does not make such records or stamps confidential or privileged but, on the contrary, expressly requires the name and place of business of each such taxpayer to be made public."

Contrary to the Government's suggestion, petitioner makes no claim that he is exempt from a tax simply because a single state has chosen to make unlawful a particular activity which Congress seeks to tax (Govt. Br., Grosso v. U. S. 10); he does not suggest that activity is exempt from taxation solely because it is, or may be, illegal under state and federal law. But when a tax law is so drafted that the tax cannot be paid without disclosures from the taxpayer which have a manifest tendency to incriminate him, it violates his privilege against self-incrimination.

The Government, then, wrongfully sanctifies the need-for-revenue issue[8] in a supremacy context. In fact, petitioner

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[8] One commentator has noted:

"Only with difficulty can one find here a bona fide purpose to raise revenue." Mansfield, *The Albertson Case: Conflict Between the Privilege Against Self-Incrimination and the Government's Need for Information*. 1966 SUP. CT. REV. 103, 158 (1966).

In its letter to the Court, the Government has estimated the amount of revenue raised by both wagering taxes (Solicitor General's letter dated January 23, 1967). Although the total amount raised since 1952 is listed as $105,988,000, the total from the special occupational tax of the type involved in this case is not listed separately by the Government and since 1952 amounts to only $10,619,197. COMM. OF INT. REV. ANN. REP. (1952-1966).

The Government estimates that the cost of enforcing both of the wagering taxes, including the cost of prosecutions by the Justice Department, amounts to $27,021,000. Petitioner has no way of analyzing the total expenditures incurred by the I. R. S. because of the special wagering stamp tax. However, the expenditures of the I. R. S. listed by the Solicitor General include only the costs of the Intelligence Division. Petitioner does point out that the expenses of other I. R. S. divisions, such as the Collection Division, the Administrative Division and the Audit Division (see I. R. S. Organization Chart, COMM. OF INT. REV. ANN. REP. 82 (1966), logically must have some bearing on the total cost incurred in collecting, as well as enforcing, the wagering taxes. These costs were not included in the Solicitor General's determination.

makes no objection whatsoever to the payment of income tax upon the wagering activity here involved. As the Government concedes, the income tax return "permits reporting of income without specific identification of source" (Govt. Br. 22, n. 21).[9] It is because the special occupational tax and registration admit of no such non-incriminating payment that they violate the taxpayer's privilege against self-incrimination.

The issue of this case is not whether illegal activity can be taxed, but whether the special occupational tax and registration operate—against the background here surveyed—to compel disclosures which deprive petitioner of his constitutional privilege against self-incrimination—a privilege recognized by this Court as "one of the great landmarks in man's struggle to make himself civilized." *Ullmann* v. *United States,* 350 U. S. 422, 426 (1956).

In any event, even the amount claimed by the Government to have been collected falls far short of the $400,000,000 a year estimated by the Senate as the revenue from this tax:

> "Actual collections of the tax have never amounted to over 2.5% of the Senate's estimate . . . The explanation would seem to be either that the Senate grossly miscalculated gambling activity in our nation, or that it attempted to cloak the penalty nature of the tax. The latter seems more probable." Note, 5 DUKE L. J., *supra* at 88 n. 12.

[9] The Government recognizes, as indeed it must, "a clear distinction between the matters involved here—registration and filing of a wagering tax return—and the filing of an income tax return . . . " (Govt. Br. 22, n. 21). As the Court held in *Albertson,* "In *Sullivan* [*United States* v. *Sullivan,* 274 U. S. 259 (1927)] the questions in the income tax return were neutral on their face and directed at the public at large, but here they are directed at a highly selective group inherently suspect of criminal activities." *Albertson* v. *Subversive Activities Control Board, supra,* 382 U. S. at 79.

I.

The Required Records Doctrine Announced In The *Shapiro* Case Has No Relevance To The Validity Of The Special Occupational Tax And Registration Requirements Of 26 U. S. C. §§4411, 4412 In The Posture Of This Case.

As the Government recognizes:

> ". . . there is no need for the Court presently to consider any possible relationship between the privilege against self-incrimination and the so-called 'required records' doctrine, see *Shapiro* v. *United States*, 335 U. S. 1. No such issue is involved on the facts of this case" (Govt. Br. 25).

Although recognizing the potential conflict between the doctrine and petitioner's claim of privilege, petitioner concurs on the basis of this Court's more recent decisions that the required records doctrine of *Shapiro* is not applicable to this case.

In *Shapiro*, the defendant, a licensee under O. P. A. food regulations, was served with a subpoena directing him to produce certain records which O. P. A. regulations required him to keep. The Emergency Price Control Act provided that the privilege against self-incrimination was not an excuse for non-compliance with the requirements of the act, but made the provisions of an earlier immunity statute available to any individual specifically claiming the privilege.

Shapiro, after claiming his constitutional privilege and his immunity, produced the subpoenaed records, which were

later used as evidence against him in a prosecution for illegal, tie-in sales. This Court affirmed in a 5-4 decision.

Primarily at issue before the Court was the "important question of statutory construction" regarding the scope of the immunity provision. 335 U. S. at 4. Although noting that the immunity provision would extend to oral testimony, the Court held that it did not bar the prosecution based on written records. The Court then considered the constitutional issue which had "not [been] duly raised by petitioner." 335 U. S. at 32.

At the threshold, the Court emphasized "that there are limits which the government cannot constitutionally exceed in requiring the keeping of records." 335 U. S. at 32. Without setting forth those limits, the Court concluded by reliance upon an earlier dictum in *Davis* v. *United States*, 328 U. S. 582, 589-590 (1946), that the

> "privilege which exists as to private papers cannot be maintained in relation to 'records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established.'" 335 U. S. at 32-33.

To ignore the "limits" recognized, but not defined, in *Shapiro*, is to endorse "the notion that because a disclosure is required the privilege does not apply", a notion which, "if extended to its full logical reach, is capable of entirely destroying the privilege." Mansfield, 1966 SUP. CT. REV., *supra* at 148.

Perhaps the most significant limitation upon the required records rule is the doctrine in *Albertson* that the privilege

prevents registration which would brand any registrant as a probable criminal. *Albertson*—decided without any reference to *Shapiro* by either the Court or any of the parties—established the supremacy of the privilege over the quest for information when the "area [is] permeated with criminal statutes . . ." *Albertson* v. *Subversive Activities Control Board, supra,* 382 U. S. at 79.

As one recent comment summarizes:

> "What the government cannot do is compel information under one statute which necessarily admits the violation of an unrelated criminal statute: this is the essence of self-incrimination." Comment, *Self-Incrimination and the Federal Excise Tax on Wagering,* 76 YALE L. J. 839, 847 (1967).

Consistent with this limitation, lower courts have invalidated the registration of firearms where it brings the unlawful act of possession to the attention of the Government. *Russell* v. *United States,* 306 F. 2d 402 (9 Cir. 1962), and the requirement for reporting sales of illegal gambling devices, *United States* v. *Ansani, et al.,* 138 F. Supp. 451 (N. D. Ill. 1955), aff'd 240 F. 2d 216 (7 Cir.), *cert. denied,* 353 U. S. 936 (1957). As the *Ansani* court said:

> "To say that these required reports [regarding gambling devices] become public documents is to erase the Fifth Amendment from the Constitution." 138 F. Supp. at 454.[10]

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[10] The court further explained:

"The problem here, as I see it, is as simple as it would be if all burglars, for example, were required to file monthly reports of burglaries perpetrated during the preceding month, together with an inventory of all stolen goods. Such a requirement

The *Albertson* doctrine—that the Congress can enact no registration requirement which compels disclosure of information in an area composed of essentially criminal activity—perhaps explains the minimal mention of *Shapiro* in *Kahriger* and total lack of reference to it in *Lewis*. If *Shapiro*, decided only five years prior to *Kahriger*, had any vitality in the wagering tax law context, the Court in *Kahriger* need not have adopted the Wigmore proposition regarding prospective operation of the privilege. Rather, it could have applied the recently enacted required records doctrine, instead of inserting a scant footnote direction to compare the *Kahriger* holding to the *Shapiro* doctrine. 345 U. S. at 33, n. 13.

By recognizing the limitation articulated in *Albertson* and the Government's present lack of reliance upon the required records doctrine, the Court need not face the task of determining whether the broader interpretation of *Shapiro* destroys the privilege.[11] But should the Court feel that

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would certainly simplify the apprehension and prosecution of burglars; but it would be repugnant to the Fifth Amendment to our Constitution, of the United States." 138 F. Supp. at 454.

[11] There is less justification to consider the application of the doctrine in this case than there was in *Clancy* v. *United States*, 365 U. S. 312 (1961). In *Clancy*, the court of appeals sustained the application of the required records doctrine in the wagering tax context on the basis of *Shapiro*. *Clancy* v. *United States*, 276 F. 2d 617, 631 (7 Cir. 1960). Although the Government relied on *Shapiro* in opposing certiorari, it told this Court in its brief on the merits that it would not rely on the required records doctrine. Brief for United States 37.

Moreover, the Court—which applied the required records doctrine for the first and last time in *Shapiro*—has not yet even decided whether the required records doctrine applies to tax records of any kind. Duke, *Prosecutions for Attempt to Evade Income Tax: A Discordant View of a Procedural Hybrid*, 76 YALE L. J. 1, 43 (1966). Prior to *Shapiro* "very few questioned the view that a taxpayer's private records were protected by the Fourth and

Shapiro's broad view—that the privilege is lost when records are required by law to be kept—is relevant to this case, petitioner urges that *Shapiro* be abandoned. For two of the "shaky foundations upon which the *Shapiro* decision was raised," Mansfield, 1966 SUP. CT. REV., *supra* at 148, have recently been set aside by the Court.

One basis for the *Shapiro* result was a distinction between "writings whose keeping as records has . . . been required" and "oral testimony," with the privilege applying only to the latter. 335 U. S. at 27. But that basis was rejected in *Albertson,* where the Court held that such a distinction makes no "difference for constitutional purposes." 382 U. S. at 78.

A second, since-undermined basis for *Shapiro* was the notion that the incriminating records could be required as a condition for engaging in the wholesale grocery business, activity available to Shapiro "solely by virtue of the license granted to him under the statute." 335 U. S. at 35. But only last Term in *Garrity* v. *New Jersey,* 385 U. S. 493. (1967), the Court invalidated the use of a confession obtained under the threat of removal from office with these words:

> "The choice given appellants was either to forfeit their jobs or to incriminate themselves. Their option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent." 385 U. S. at 495-496.

Fifth Amendments. A long line of cases defining these constitutional protections had operated on the unspoken assumption that a taxpayer could not be forced to reveal incriminating information . . . " Redlich, *Search, Seizures, and Self-Incrimination in Tax Cases,* 10 TAX L. REV. 191, 192 (1954).

Shapiro, then, insofar as it holds that a licensee's right to a livelihood can be conditioned upon abandonment of Fifth Amendment rights, is contrary to *Garrity*.

With these foundations removed, *Shapiro's* broad view does not survive this Court's recent decisions and petitioner urges its rejection so as not to cloud the privilege which reflects our "most noble aspirations." *Murphy* v. *Waterfront Commission of New York*, 378 U. S. 52, 55 (1964).

II.

An Obligation To Pay A Special Occupational Tax Required By 26 U. S. C. §4411 Cannot Be Satisfied Without Filing The Registration Statement Provided For By 26 U. S. C. §4412.

That the special tax required by 26 U. S. C. §4411 cannot be paid without filing the registration statement provided for by 26 U. S. C. §4412 is clear from the statutes themselves, the case law, the legislative history and the practice of the Service. It is conceded by the Government. As one recent comment states:

> "A gambler cannot pay the tax without registering and providing the required information; it is therefore impossible to comply without revealing incriminating information." Comment, 76 YALE L. J., *supra* at 840.

One of the two provisions directly involved in petitioner's case, 26 U. S. C. §4412, specifically provides that any person paying the special occupational tax "shall register . . . with the officer in charge," his name and place of business, the name and address of his agents and the name and ad-

dress of his principals. By virtue of 26 U. S. C. §6001, petitioner, if a "person liable for any tax . . . [would have to] . . . make such returns, and comply with such rules and regulations as the secretary or his delegate may from time to time prescribe . . .," and 26 U. S. C. §6011(a) provides, ". . . every person required to make a return or statement shall include therein the information required by such forms or regulations."

As indicated by the cases, the fact that a tendered payment of the special occupational tax is refused is no defense to a subsequent prosecution for non-payment of the special tax. *United States* v. *Mungioli*, 233 F. 2d 204, 205 (3 Cir. 1956), *cert. denied*, 352 U. S. 828 (1957); *United States* v. *Whiting*, 311 F. 2d 191, 193 (4 Cir. 1962); *Holren* v. *Schneider*, 101 F. Supp. 531 (D. C. 1951), aff'd 342 U. S. 939 (1952). As the Third Circuit said in *Mungioli*, even if the defendant had "tendered payment of the tax before accepting wagers," his "claim of the privilege against self-incrimination would be totally lacking in substance." 233 F. 2d at 205.

Clearly, it was the intent of Congress that payment of the special occupational tax without registration not be possible:

> ". . . the bill provides that a person who pays the occupational tax *must*, as part of his registration, identify those persons who are engaged in receiving wagers for or on his behalf, and, in addition, identify the persons on whose behalf he is engaged in receiving wagers." [12] (Emphasis added.)

[12] H. R. Rep. 586, 82d Cong., 1st Sess. 60; S. Rep. 781, 82d Cong., 1st Sess. 118 (1951).

The Internal Revenue Service has also recognized that registration must accompany payment of the occupational tax. The regulations provide that Form 11-C, which is the return by which the special occupational tax is paid, shall be filed prior to engaging in activity which makes the taxpayer responsible for the occupational tax. 26 C. F. R. §44.6071-1(b). And former Commissioner Caplin has stated:

> "Everyone liable for the annual $50 occupational tax is required to register his name and the address of his place of business with the appropriate district director of the Internal Revenue." Caplin, *The Gambling Business and Federal Taxes*, 8 CRIME AND DELINQUENCY 371, 375 (1962).

Moreover, the Government, in attempting to distinguish the means of payment of the excise tax from the means of payment of the special occupational tax admits, "that the occupational tax . . . requires registration—the two are accomplished through filing of a single form" (Govt. Br., Grosso v. U. S. 14 n. 10).

Here, then, as in *Albertson* v. *Subversive Activities Control Board, supra,* 382 U. S. at 78, "nothing in the Act or regulations permits less than literal and full compliance with the requirements of the form. . . ."

Even if the requirements of 26 U. S. C. §4411 could be satisfied without registration—and, as noted, it is uniformly recognized that this cannot be accomplished—payment of the special occupational tax in the statutory scheme here involved, 26 U. S. C. §§4411, 4901(c), 6107, 6806(c), would be an act of a "communicative nature," *Schmerber* v. *Cali-*

fornia, 384 U. S. 757, 761 (1966), and would be incriminating. One jurisdiction has made possession of the special occupational tax stamp—which 26 U. S. C. §6806(c) requires to be "conspicuously" posted—an offense if the holder has the requisite intent. *Kansas City* v. *Lee,* —— Mo. ——, 414 S. W. 2d 261, *appeal docketed,* 1 CR. L. REP. 2235 (1967). Another imposes a maximum fine of $50 for each day one possesses the special occupational tax stamp without regard to intent. *Deitch, et al.* v. *City of Chattanooga,* 195 Tenn. 245, 258 S. W. 2d 776 (1953).

Assuming that these offenses making possession of the wagering tax stamp illegal are legislative aberrations, the payment of the special occupational tax pursuant to the statutory scheme employed here[13] results in "risks of incrimination . . . [which] are obvious . . ." *Albertson* v. *Subversive Activities Control Board, supra,* 382 U. S. at 77. Since it subjects the taxpayer's name and address to public inspection, 26 U. S. C. §6107, and requires him to "conspicuously" display his special occupational tax stamp, 26 U. S. C. §6806(c), payment of the special occupational tax, even without registration, "'"*cannot possibly* have . . . [anything but a] . . . tendency to incriminate,"'" *Malloy* v. *Hogan,* 378 U. S. 1, 12 (1964). It clearly furnishes, at least, "a link in a chain of evidence needed to prosecute." *Hoffman* v. *United States,* 341 U. S. 479, 486 (1951).

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[13] The Government states that in the area in which this tax operates payment cannot be anonymous: "Certainly a tax scheme could not be administered without the government's obtaining the name and address of those paying the tax" (Govt. Br., Grosso v. U. S. 8).

III.

The Special Occupational Tax And Registration Violate Petitioner's Privilege Against Self-Incrimination Guaranteed By The Fifth Amendment, Requiring The Overruling Of The *Kahriger* And *Lewis* Cases.

The Government urges this Court to recognize a continued vitality in the *Kahriger-Lewis* rationale (Govt. Br. 14-15). In this regard it refrains from (1) measuring the *Kahriger-Lewis* doctrine against the scope of the privilege, as defined both before and after *Kahriger* and *Lewis* and (2) examining the sole cited authority in *Kahriger*—a single citation to Professor Wigmore's treatise—for the proposition that the privilege relates only to past acts.[14]

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[14] "The Court's rule that the privilege was applicable only to admissions of past acts rested on a questionable citation to Professor Wigmore and the theory of implied waiver. Wigmore's analysis, however, was based on cases denying the privilege to druggists who were required to report liquor sales and pawnbrokers required to record pledges. The activities of pharmacy and pawnbroking are a 'generic class of acts,' legal in themselves; the criminality of the particular activity reported is 'due to the party's own election, made subsequent to the origin of the duty' to report or record the information. Since *gambling* and the transfer of marijuana are *illegal per se under the laws of most states*, Wigmore's analysis would not seem to compel the holding of the Court. Further, the basis of Wigmore's conclusions, cited with approval by the Court in other cases, was the presumption that the party waived his constitutional right by the decision to pursue an otherwise legal activity in an illegal manner. A similar approach is suggested in the *Lewis* case where the Court, emphasizing the lack of compulsion, asserted that the gambler is free to forgo his illegal activity before signing the government blank. In the registration situation, however, as in the record-keeping cases, the waiver argument begs the question. To be sure, the government can exclude the citizen from many activities by declaring the particular conduct illegal; every would-be criminal is, at the threshold, free to choose whether to commit the illegal act. But his decision to commit that act does

Rather the Government emphasizes *Lewis'* language that "there is nothing compulsory about" the wagering tax act because there is no "constitutional right to gamble" (Govt. Br., Grosso v. U. S. 17).

As to the non-compulsory contention, Professor Mansfield has pointed out:

> "It is clear that this argument must be rejected and that the privilege cannot be considered forfeited in these circumstances because of the fact of choice. . . . To hold that since the defendant made a choice to commit the primary offense the privilege is lost would be to abolish the privilege in one of its central applications, to abolish it in cases in which it has always historically applied, to defeat its very purpose . . . This is true even though the defendant had no right to choose as he did, no right to commit the primary offense. The privilege is designed to provide protection even for those who have chosen to commit crime." Mansfield, 1966 SUP. CT. REV., *supra* at 130-131.

And as to the projected constitutional right to gamble, he states:

> "Of course he [petitioner] had no right to gamble. That is to say, he could be punished for the act of gambling. . . . The fact that an activity is already prohibited as criminal does not necessarily mean that any

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not imply a choice to relinquish protections guaranteed by the Constitution to all citizens. Once such a decision has been made, the courts must still determine whether the government can conscript the aid of the individual in attempting his conviction." Note, *Required Information and the Privilege Against Self-Incrimination*, 65 COL. L. REV. 680, 689-90 (1965). (Emphasis added.)

and all means may be used to deter it or to bring about the detection and prosecution of violators. It is not absurd to say that a person who has no right to do an act nevertheless has a right not to answer questions about his intention to do the act when the purpose of the questions is to facilitate his prosecution for doing the act." Mansfield, 1966 SUP. CT. REV., *supra* at 155.

If, on the day petitioner should have paid the special occupational tax and registered, he was asked, before a grand jury, court or other tribunal, whether he intended to accept wagers for himself or others, he most certainly could have invoked the Fifth Amendment privilege. Of this, there would seem not the slightest doubt because of the possibility of incrimination under state and federal law.[15]

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[15] As to state law, former Commissioner of the Internal Revenue Service Caplin stated:

"The dilemma of the bookmaker is apparent. If he registers and pays the wagering taxes, he is generating evidence of his gambling activities—evidence that is available to local authorities. If he does not register, he exposes himself to the sanctions and penalties contained in the federal wagering tax laws." Caplin, 8 CRIME AND DELINQUENCY, *supra* at 375.

As to federal law, the possibility of incrimination is likewise clear, notwithstanding the Government's contention that there "is no danger of federal prosecution" (Govt. Br. 19). In a decision announced since the first argument in this case, the Court of Appeals for the Sixth Circuit upheld a conviction for receiving a sports publication through the mail, in violation of the law proscribing interstate and foreign travel or transportation in aid of racketeering enterprises, 18 U. S. C. §1952. Said the court:

"Appellant's contention that his extra-judicial admission to Agent Norwood cannot be considered because they were uncorroborated, United States v. Calderon, 348 U. S. 160, 75 S. Ct. 186, 99 L. Ed. 202 is unfounded. Substantial evidence to corroborate such admissions is found in appellant's possession of Federal Wagering Tax Stamps and his filing of monthly Wagering Excise Returns . . . " *United States* v. *Ross*, 374 F. 2d 227, 229-230 (6 Cir. 1967).

Since *Kahriger* and *Lewis*, the distinction between oral and written responses, as noted, has been forthrightly rejected. *Albertson* v. *Subversive Activities Control Board, supra*, 382 U. S. at 78. And the link-in-the-chain principle ignored in those cases has been re-established. *Malloy* v. *Hogan, supra*, 378 U. S. at 11. The reasoning of *Kahriger* and *Lewis*, then, fails to survive the recent pronouncements of this Court.

IV.

The Use-Restriction Rule Urged By The Government In The Event The Special Occupational Tax And Registration Are Held To Violate The Fifth Amendment Privilege Is Not Justified In This Case.

In its alternative argument, the Government proposes that the Court abandon the traditional "right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will," *Malloy* v. *Hogan, supra*, 378 U. S. at 8, and urges a rule that would restrict the use of information disclosed by the wagering tax laws (Govt. Br. 19-27).

Since the original briefs were filed in this case, the Court has again acted so as to reject the argument proposed by the Government. In *Spevack* v. *Klein*, 385 U. S. 511 (1967), the Court held it improper to penalize by disbarment an attorney who failed to produce written records pursuant to a *subpoena duces tecum*, thus upholding the right to silence as a proper invocation of the Fifth Amendment privilege. If the Government's contention be sound, *Spevack*

was wrongly decided: *Spevack*, under the Government's notion, should have provided on remand for compliance with the subpoena and exclusion from use of the material disclosed. But this the Court did not do.

At least one lower court has forthrightly rejected the Government's immunity-from-use-argument, since the original argument in this case. In *United States* v. *Chandler*, —— F. 2d ——, —— (2 Cir. 1967), in language equally applicable here, a unanimous court of appeals held:[16]

> "The Government, citing *Murphy* v. *Waterfront Commission*, 378 U. S. at 79, also tells us to 'remember that . . . incrimination cannot result from an answer given in response to a Court's direction. Such an answer is involuntary—indeed it is coerced—and therefore never can be used against the declarant.' But the portion of the opinion cited dealt with the problems of adjustment in federal-state relationships when incriminating testimony is compelled under a state immunity statute. No such statute, state or federal, is invoked here, and no suggestion of possible immunity was even hinted at in questioning the witness. Cf. *Stevens* v. *Marks*, 383 U. S. 234 (1966). Moreover, absent a grant of immunity, restricted treatment of a coerced disclosure, see *United States* v. *Blue*, 384 U. S. 251 (1966), is not a substitution of an exclusionary rule for the right to remain silent; rather it is an effort to limit the effect of prior wrongfully compelled testimony. See Mansfield, *The Albertson Case*:

[16] The Government, which originally argued here that the use-restriction rule did not apply to oral testimony (Govt. Br. Grosso v. U. S. 13-14), has been quick to expand its use-restriction rule to oral testimony. *Chandler* involved a recalcitrant witness at a federal criminal trial.

Conflict Between the Privilege Against Self-Incrimination and the Government's Need for Information, in 1966 Supreme Court Review 103, 162. To argue, therefore, that refusal to answer under an erroneous order is contemptuous puts the cart before the horse. Indeed, if this reasoning were controlling, the privilege to remain silent need never be observed."

Professor Mansfield has suggested a potential evil in the argument the Government advanced here:

"It may turn out that the theory of protection from prosecutory use is simply a cloud of words behind which the substance of the privilege is lost. This may be true even though it is laid down that in any prosecution brought against a person who was required to disclose incriminating information, the government has the burden of showing that its evidence was obtained independently of the compelled disclosure. *As a practical matter, will it be possible to determine whether the government's evidence was obtained independently?* Suppose the evidence used to convict has no causal connection with the compelled disclosure other than that it provided the reason for commencing an investigation? . . . The upshot of a rule restricted to forbidding prosecutory use may be that a person is in fact much worse off in regard to the danger of prosecution and conviction than if he had remained silent." Mansfield, 1966 SUP. CT. REV., *supra* at 165. (Emphasis added.)

The Government's proposed exclusionary rule, then, cannot be applied here without dilution of the privilege. The

Government argument to the contrary ignores, *inter alia*, the results in recent cases and is based upon a false distinction between oral and written inquiries.

Conclusion

By its limited grant of certiorari the Court has agreed to re-examine its earlier holdings that the wagering tax laws do not operate to deny the privilege against self-incrimination. Petitioner maintains that, even if Congress does not encroach upon the power of the states in enacting a revenue measure, it cannot provide for a tax scheme which necessarily runs afoul of the Fifth Amendment. We are not here dealing in an area where a state has chosen to make unlawful a particular activity which Congress seeks to tax; rather we are here involved in an area where almost all of the states and the Congress have chosen to make a host of activities unlawful.

To hold that Congress, without violating the Fifth Amendment, can enact a tax scheme which requires the taxpayer to confess, among other things, to whether or not he is engaged in the business of accepting wagers—in view of the fact that wagering in this country is an area saturated with criminal offenses—is to run roughshod over "the tradition of the broad protection given the privilege," *Spevack* v. *Klein, supra,* 385 U. S. at 515.

Petitioner does not minimize the significance of the national revenues in our society. But if the wagering tax laws are upheld here, Congress need only provide a registration fee to validate against Fifth Amendment objection the regulatory scheme unanimously overturned by this Court in the *Albertson* case.

For these reasons, then, the judgments of the court below should be—and petitioner requests that they be—reversed with directions to enter judgments of acquittal.

Respectfully submitted,

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August 23, 1967.

APPENDIX

APPENDIX

Constitutional and Statutory Provisions Involved

Amend. V, U. S. Const.: *Capital Crimes; Double Jeopardy; Self-incrimination; Due Process; Just Compensation for Property*

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

INT. REV. CODE OF 1954, §4401: *Imposition of tax*

> (a) Wagers—There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 10 percent of the amount thereof.
>
> (b) Amount of wager—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a

separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) Persons liable for tax—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having registered under section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

INT. REV. CODE OF 1954, §4402. *Exemptions*

No tax shall be imposed by this subchapter—

(1) Parimutuels.—On any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law,

(2) Coin-operated devices.—On any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 4461, or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462 (a) (2), if an occupational tax is imposed with respect to such device by section 4461, or

(3) State-conducted sweepstakes.—On any wager placed in a sweepstakes, wagering pool, or lottery—

(A) which is conducted by an agency of a State acting under authority of State law, and

(B) the ultimate winners in which are determined by the results of a horse race,

but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

INT. REV. CODE OF 1954, §4403: *Record Requirements*

Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a).

INT. REV. CODE OF 1954, §4411: *Imposition of tax*

There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

INT. REV. CODE OF 1954, §4412: *Registration*

(a) Requirement—Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

(1) his name and place of residence;

(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf: and

(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

(b) Firm or company—Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

(c) Supplemental information—In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

INT. REV. CODE OF 1954, §4421: *Definitions*

For purposes of this chapter—

(1) Wager.—The term "wager" means—

(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

(C) any wager placed in a lottery conducted for profit.

(2) Lottery.—The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include—

(A) any game of a type in which usually

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and

(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

INT. REV. CODE OF 1954, §4422: *Applicabliity of federal and state laws*

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

INT. REV. CODE OF 1954, §4423: *Inspection of books*

Notwithstanding section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter.

INT. REV. CODE OF 1954, §4901: *Payment of tax*

(a) Condition precedent to carrying on certain business.—No person shall be engaged in or carry on any

trade or business subject to the tax imposed by section 4411 (wagering), 4461(a)(1) (coin-operated gaming devices), 4721 (narcotic drugs), or 4751 (marihuana) until he has paid the special tax therefor.

(b) Computation.—All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid.—

(1) Stamp.—All special taxes imposed by law shall be paid by stamps denoting the tax.

. . .

INT. REV. CODE OF 1954, §6001: *Notice or regulations requiring records, statements, and special returns*

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

INT. REV. CODE OF 1954, §6011: *General requirement of return, statement, or list*

(a) General rule.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

. . .

INT. REV. CODE OF 1954, §6107: *List of special taxpayers for public inspection*

In the principal internal revenue office in each internal revenue district there shall be kept, for public inspection, an alphabetical list of the names of all persons who have paid special taxes under subtitle D or E within such district. Such list shall be prepared and kept pursuant to regulations prescribed by the Secretary or his delegate, and shall contain the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality there shall be furnished to him a certified copy thereof, as of a public record, for which a fee of $1 for each 100 words or fraction thereof in the copy or copies so requested may be charged.

INT. REV. CODE OF 1954, §6653: *Failure to pay tax*

(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.*—If

any part of any underpayment (as defined in subsection (c) (1)) of any tax imposed by subtitle A or by chapter 12 of subtitle B (relating to income taxes and gift taxes) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

. . .

(e) *Failure to pay stamp tax.*—Any person (as defined in section 6671(b)) who willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under authority of this title, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

INT. REV. CODE OF 1954, §6806: *Posting occupational tax stamps*

. . .

(c) *Occupational wagering tax.*—Every person liable for special tax under section 4411 shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request, to any officer or employee of the Treasury Department.

INT. REV. CODE OF 1954, §7201: *Attempt to evade or defeat tax*

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

INT. REV. CODE OF 1954, §7203: *Willful failure to file return, supply information or pay tax*

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

INT. REV. CODE OF 1954, §7262: *Violation of occupational tax laws relating to wagering—failure to pay special tax*

Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to

the payment of the tax, be fined not less than $1,000 and not more than $5,000.

INT. REV. CODE OF 1954, §7273: *Penalties for offenses relating to special taxes*

. . .

(b) *Failure to post or exhibit special wagering tax stamp.*—Any person who, through negligence, fails to comply with section 6806(c) relating to the posting or exhibiting of the special wagering tax stamp, shall be liable to a penalty of $50. Any person who, through willful neglect or refusal, fails to comply with section 6806(c) shall be liable to a penalty of $100.

FORM 11-C
Rev. Mar. 1958

U. S. Treasury Department—Internal Revenue Service

SPECIAL TAX RETURN AND APPLICATION FOR REGISTRY—WAGERING

(See Instructions on reverse for time and place for filing return)

Return for period from ..... (Month, day, and year) **to June 30, 19**.....

1. Name: True name.....

Alias, style, or trade name, if any.....

2. Address: Residence.....
(Number and street)

.....
(City) (County) (State)

Business.....
(Number and street)

.....
(City) (County) (State)

3. If this is merely an application for registry with which no remittance of tax is required, please explain and give your Special Tax Stamp No. and Registration No. (see instruction 2)

.....

.....

.....

.....

(If additional space is required for items 4, 5 (a), 5 (c), or 6, attach additional sheets, identifying each entry as to item number.)

For District Director's Use Only

.....
(Stamp number)

.....
(Date issued)

.....
(Registration number)

Tax	$
Penalty	$
Interest	$
Total	$

Make remittance payable to the Internal Revenue Service. Payment may be made by cash, check or money order.

4. If taxpayer is a firm, partnership, or corporation, give true name of members or officers.

True name	Title	Home address

5. Are you engaged in the business of accepting wagers on your own account? ☐ Yes ☐ No (Check one)

If yes, complete (a), (b), and (c) of this item.

(a) Name and address where each such business is conducted.

Name of location	Street address	City and State

(b) Number of employees and/or agents engaged in receiving wagers on your behalf .....

(c) True name, current address, and special tax stamp number of each such person.

True name	Special stamp No. in present use	Street address	City and State

6. Do you receive wagers for or on behalf of some other person or persons? ☐ Yes ☐ No (Check one)

If yes, give true name and address of each such person.

True name	Street address	City and State

SIGNATURE AND VERIFICATION

I declare under the penalties of perjury that this return and/or application (including any accompanying statements or lists) has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

....., 19.....
(Date)

.....
(Signature)

.....
(State whether individual owner, member of firm, or if corporation officer, give title)

11a